

HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case

Special Appeal No. 127 of 2006
With
Special Appeal No. 128 of 2006

Date of Decision: 19th December, 2006

A.F.R. (Approved for reporting)

~~Not approved for reporting.~~

Date: 19.12.2006

Initial of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Special Appeal No. 127 of 2006

Kundan Lal
S/o Sri Madan Ram
R/o Village & Post Office – Simkuni
District – Bageshwar ... Appellant

Versus

1. State of Uttaranchal
Through Secretary,
Education Basic Uttaranchal, Dehradun
2. Basic Shiksha Adhikari, Bageshwar
3. Principal, District Education and Training Institute.
Bhimtal, District – Nainital ... Respondents

And

Special Appeal No. 128 of 2006

Km. Devki D/o Sri Ajab Singh
R/o Village – Timila Bager,
P.O. Kapkot, Bageshwar
District – Bageshwar ... Appellant

Versus

1. State of Uttaranchal
Through Secretary
Education Basic Uttaranchal, Dehradun
2. Basic Shiksha Adhikari, Bageshwar
3. Principal, District Education and Training Institute,
Bhimtal, District – Nainital ... Respondents

Shri D.S. Patni and Shri Manish Dalakoti, Advocates for the appellant.
Shri N.C. Gupta, learned standing counsel for respondents.

Judgment

Coram : Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

1. Since both the appeals are arising out of the judgment and order dated 09.05.2006 passed by the learned Single Judge of this Court and involve the common question of fact and law, therefore, the appeals are being decided by the common judgment.

2. These special appeals under Rule 5 Chapter VIII of the High Court Rules have been filed against the judgment and order dated 09.05.2006 passed by the learned Single Judge of this Court in Civil Writ Petition No. 22 of 2006 (S/S) Kundan Lal Vs. State of Uttaranchal & others and Civil Writ Petition No. 35 of 2006 (S/S), Km. Devki Vs. State of Uttaranchal & others whereby the learned Single Judge has dismissed both the petitions.

3. Civil writ petitions bearing No.22 of 2006 (S/S) and 35 of 2006 (S/S) were filed before the learned Single Judge by the petitioners-Kundan Lal and Km. Devki for the following reliefs:-

- i. To issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 24.12.2005 passed by the Respondent No.1 (Annexed as, Annexure No.1 to the Writ Petition).
- ii. To issue a writ order or directions in the nature of Mandamus commanding the Respondents to permit the Petitioners to work as Assistant teacher at Primary School, Badiyakot Shetra/Dulag Shetra, Kapkot, District – Bageshwar.
- iii. To Issue a writ, order or direction in the nature of Mandamus commanding the Respondent No.3 to provide the petitioners the original Mark-sheet and Certificate of Special B.T.C. training.
- iv. To issue any other order to direction which this Hon'ble High Court may deem fit and proper in the facts and circumstances of the case.
- v. Award the cost of the Petition to the Petitioners.

4. The writ petitioners (appellants) had obtained certificate of Physical Education from Sri Hanuman Vyayam Prasarak Mandal, Amravati, Maharashtra after 1997. In pursuant to the advertisement issued by the Principal, District Education and Training Institute, Almora the petitioners applied for the Special B.T.C. Training Course for the year 2005. As per the

advertisement, the candidates were required to possess qualification of graduation and also must have obtained B.Ed., L.T., C.P.Ed., D.P.Ed. or B.P.Ed. as regular candidates from the institutions recognized by the State of U.P. or State of Uttaranchal. It was also provided in the advertisement that the candidates who had completed C.P.Ed. before 1997 would be eligible for the said course. The petitioners challenging the said condition, filed writ petitions before this Court and this Court vide order dated 01.09.2003 in Writ Petition No. 169 of 2003 (S/S) and Order dated 04.11.2004 in Writ Petition No. 1263 of 2004 (S/S) directed the respondents to permit the petitioners to complete their training in Special B.T.C. Course. After completion of the training of the petitioners, they were appointed as Assistant Teacher in primary schools. However, vide order dated 24.12.2005 the appointment of the petitioners were cancelled on the ground that the certificates obtained by them were not recognized. Feeling aggrieved by the said order, the writ petitioners (appellants) filed the writ petitions before this court.

5. In both the writ petitions counter affidavit has been filed by the Additional District Education Officer (Basic), Bageshwar in which it has been stated that the appointment given to the petitioners (appellants) was temporary appointment in view of the interim order passed by this court in the writ petitions filed by the writ petitioners. It was further pleaded that the writ petitioners (appellants) had obtained the C.P.Ed. after the year 1997 from Sri Hanuman Vyayam Prasarak Mandal, Amravati, Maharashtra and they were not eligible to the B.T.C. Training Course. It was further pleaded that the State of U.P. issued a G.O. dated 23.05.1995 by which the recognition of C.P.Ed. from Sri

Hanuman Vyayam Prasarak Mandal, Amravati, Maharashtra was cancelled. It was further pleaded that the State of Uttaranchal also issued a G.O. on 13.11.2001 wherein it had been provided that only regular candidates would be treated qualified with the aforesaid C.P.Ed., provided they had obtained the said certificate till 1997. It was further pleaded that the Division Bench of this Court in Special Appeal No. 47 of 2005, **Usha Rawat and another Vs. State of Uttaranchal and others**, decided on **29.07.2005** held that the writ petitioners who had obtained certificate of C.P.Ed. from Sri Hanuman Vyayam Prasarak Mandal, Amravati, Maharashtra after 1997 had no legal right to continue in the service. In that Special appeal the writ petitioners had also obtained the certificate of C.P.Ed. from Sri Hanuman Vyayam Prasarak Mandal, Amravati, Maharashtra after 1997, as such, their services were rightly dispensed with.

6. After hearing the parties, the learned Single Judge dismissed the writ petitions and came to the conclusion that the writ petitioners had admittedly obtained C.P.Ed. degree after 1997 from Sri Hanuman Vyayam Prasarak Mandal, Amravati, Maharashtra and they had no legal right to get admission in the Special B.T.C. Course conducted by the respondents. The learned Single Judge dismissed the writ petitions holding that the controversy involved in the writ petitions was squarely covered with the controversy involved in **Special Appeal No. 47 of 2005, Km. Usha Rawat and another (Supra)**, decided by the Division Bench of this Court.

7. Feeling aggrieved by the judgment and order of the learned Single Judge, the present appeals have been preferred by the writ petitioners (appellants).

8. Heard learned counsel for the parties and perused the record.

9. The only question arises for the consideration in these appeals whether the appellants are eligible for admission to Special B.T.C. Course for the year 2005. The writ petitioners (appellants) had not disputed that the candidate should possess the qualification of graduation and also should possess B.Ed., L.T., C.P.Ed., D.P.Ed. or B.P.Ed as required from the institution recognized by the State of U.P. and Uttaranchal. In the said advertisement, the condition was also stipulated that only those candidates who had completed C.P.Ed. before 1997 would be eligible for the course of Special B.T.C. The learned counsel for the writ petitioners (appellants) contended that the C.P.Ed. degree acquired till 1997 was a recognized qualification, therefore, the writ petitioners (appellants) who obtained the admission to the C.P.Ed. course in the year 1997 should be treated as eligible candidates. Learned counsel for the respondents/State refuted the contention. Perusal of the record reveals that the State of U.P. had de-recognized the C.P.Ed. course in the State U.P. vide order dated 23.03.1995 after 1997. Thus, the certificate of C.P.Ed. issued from Sri Hanuman Vyayam Prasarak mandal, Amaravati, maharashtra is not recognized by the State of U.P. after the year 1997. The writ petitioners (appellants) had admittedly got admission to the C.P.Ed. course in Sri Hanuman Vyayam Prasarak mandal, Amravati, Maharashtra only in the year 1997, i.e. one year after the Government order dated 28.02.1996 and obtained the certificated of C.P.Ed. qualification only in the year 1998. Thus, the writ petitioners (appellants) are not entitled to the relaxation allowed in the case of students who had been

admitted to the course in the year 1996 and obtained the certificate in the year 1997.

10. In the case of **Km. Usha Rawat (Supra)**, the petitioners filed a writ petition before the learned Single Judge who had dismissed the writ petition holding that the G.O. clearly mentions that the candidate must pass out in the year 1997 for the academic sessions 1996-97. It was also held that as per the G.O. dated 23.11.2001 the petitioners are not eligible to be admitted in the Special B.T.C. Courses in the State of Uttaranchal. It was further held that the petitioners had not shown that the institution from which they have obtained certificates is recognized C.P.Ed. Course in Uttaranchal for admission in the Special B.T.C. Training Course. Hence, the petitioners are not entitled to the admission for the special B.T.C course. Aggrieved by the said order, the petitioners filed a special appeal before the Division Bench of this Court. The Division Bench dismissing the appeal held that because the appellants who got admission to the course one year after the course was derecognized by the State of U.P, the appellants cannot claim that the C.P.Ed. qualification acquired by them should be treated as a recognized qualification for the Special B.T.C. course.

11. In the case of **Rajasthan and others Vs. Lata Arun, reported in AIR 2002 SC p/2642**, the question which arises for determination in this case is whether the respondent had the eligibility qualification for admission in General Nursing and Midwifery and Staff Nurse Course commencing in the year 1990. The Director, Medical and Health Services had invited application for the admission of Nursing Course in which the eligibility of the candidates was

determined that the candidates must have possess first year of Three Years' Degree Course (TDC) or 10+2; and that the candidates with science subjects (Biology, Chemistry and Physics) will be given preference. During the period the Indian Nursing Council had issued a set a Syllabi and Regulations for courses in General Nursing and Midwifery in which the prescribed minimum educational qualification for the candidates was 12th class pass or its equivalent preferably with science subjects. The petitioner possesses the Madhyama Certificate issued by the Hindi Sahitya Sammelan, Allahabad in 1984. This Certificate was previously recognized as equivalent to a degree in Hindi. The said recognition had ceased to be operative with effect from 01.04.1985. The petitioner was given provisional admission in the Nursing Course which was subsequently cancelled that the writ petitioner had not the educational qualification prescribed for the said course. The Rajasthan High Court allowed the writ petition. The Hon'ble Apex Court while allowing the appeal relied upon the judgment of Apex Court in **Delhi Pradesh Registered Medical Practitioners Vs. Director of Health, Delhi Admn. Services & others** reported in **(1997) 11 SCC p/678** and **Dr. Ravinder Nath Vs. State of H.P. and others** reported in **AIR 1993 SC p/408** and held that the writ petitioner was not eligible to the admission as the Degree of Madhyama was a de-recognized by the State of Rajasthan. The Hon'ble Apex Court held that there are two questions involved in this appeal. One relates to the prescription of minimum educational qualification for admission to the course and the second relates to recognition of the Madhyama Certificate issued by the Hindi Sahitya Sammelan, Allahabad as equivalent to or higher than +2 or 1st year of TDC for the purpose of admission. Both these points relate to the matters in the realm of policy decision to be taken by the

State Government or the authority vested with power under any statute. It is not for Courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification in the case. The Apex Court further held that the prescribed eligibility qualification for admission to a particular course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for the Courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority. The order of the Rajasthan High Court was set aside. Thus the above decision reveals that the diploma and degree courses of Hindi Sahitya Sammelan, Allahabad had a controversial matter to be decided by the State.

12. Learned counsel for the writ petitioners (appellants) further contended that the writ petitioners (appellants) had completed Special B.T.C. Training Course and thereafter appointed as Assistant Teacher for 10 months, as such, certain rights had been accrued in favour of the writ petitioners (appellants). Their termination order is not sustainable. Learned counsel for the respondents refuted the contention. Perusal of the record reveals that the writ petitioners (appellants) filed the writ petitions before this court for seeking direction that the respondents of consider the application of the petitioners for training in the appointment on the post of Assistant Teacher in the primary school ignoring the condition that only those candidates who have passed training from the institution recognized by the State of U.P. upto 1997 shall be deemed qualified. The writ petitioners (appellants) were granted interim relief and the petitioner were directed to appear in the examination for the

academic year 2004-05 for the Special B.T.C. Training Course. Thereafter, this court directed the respondents to declare the result of the petitioners of the Special B.T.C. Training Course. In pursuance of the said order of the court they were declared successful. The appointment letter issued to the writ petitioners clearly reveal that the appointments were made in pursuance of the order passed in writ petitions of the petitioners (appellants) and it was further provided in the said appointment letters that their services can be terminated at any time without any notice. The appointment letters also reveal that appointments had been made only on the basis of the orders passed by this court. The writ petitioners (appellants) were not eligible to be admitted to the said B.T.C. Course for the year 2005 merely on the basis of this court's interim orders/ orders passed in writ petitions filed by the writ petitioners (appellants) for admission and continuance of the completion of the B.T.C. Course or declaration of the result. The writ petitioners (appellants) cannot claim appointment as a right to the post of Assistant Teacher in the Primary School. The division Bench of this Court in **Km. Usha Rawat and another (Supra)** held that a persons holding C.P.Ed. from Sri Hanuman Vyayam Prasarak Mandal, Amravati, Maharashtra after 1997 were not eligible for the admission for the Special B.T.C. Course and as such, the candidates had no legally enforcement right to get the admission in the Special B.T.C. Course. Hence the learned Single Judge was justified in holding that the writ petitioners (appellants) were not eligible for the admission to the said B.T.C. Course for the year 2005.

13. In view of the forgoing discussion, we are of the considered view that the appeals are liable to be dismissed and the judgment and order dated 09.05.2006 passed by the

learned Single Judge in Civil Writ Petition Nos. 22 of 2006 (S/S) and 35 of 2006 (S/S), is liable to maintained.

14. Accordingly, the appeals are dismissed and the judgment and order dated 09.05.2006 passed by the learned Single Judge in Civil Writ Petition Nos. 22 of 2006 (S/S) and 35 of 2006 (S/S), is hereby affirmed.

15. No order as to costs.

(J.C.S.Rawat, J.) (Rajeev Gupta, C.J.)

Dated 19th December, 2006
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